

Internal Revenue Service

**memorandum**

CC:TL:TS WHEARD

TL-N-992-91

date: **NOV 15 1990**

to: District Counsel, Sacramento CC:SAC  
Attn: Alan Stains

from: Assistant Chief Counsel (Tax Litigation) CC:TL

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subject: Request for Advice/ [REDACTED]

This memorandum responds to your request that we review your analysis of a TEFRA/Scar issue (attached). We agree in full with your analysis and conclusions which were previously coordinated with this office by telephone. Nevertheless, we recommend that a second extension of the period of limitations on assessment for the [REDACTED] taxable year be solicited due to the hazard that the initial extension may have been inadvertently terminated.

The original Form 872-P executed with respect to the [REDACTED] taxable year provides in part:

The amount of any Federal income tax with respect to any person on any partnership item(s) for the above named partnership for the period ended [REDACTED] may be assessed on or before the 90th (ninetieth) day after: (a) the Internal Service office considering the case receives Form 872-N, Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership ; or (b) the Internal Revenue Service mails Form 872-N to the partnership. If a Notice of Final Partnership Administrative Adjustment is sent to the partnership, the time for assessing the tax for the period(s) stated in the Notice of Final Partnership Administrative Adjustment will not end until 1 year after the date on which the determination of the partnership items becomes final. (emphasis supplied)

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The last sentence of the above quoted language implies that the extension will terminate with respect to the [REDACTED] taxable year if the [REDACTED] taxable year is "stated" in a subsequently issued notice of FPAA. Under the analysis you have provided, a notice of FPAA was only issued with respect to the [REDACTED] taxable year. Because of the typographical/clerical error, however, the [REDACTED] taxable year was "stated" in this notice although this year was not being adjusted. Since documents are generally construed against the drafter, there is a hazard that the extension has been terminated.

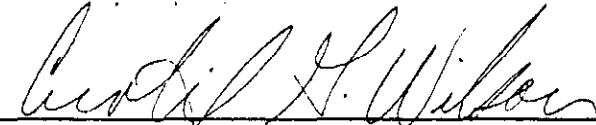
The counter argument is that the extension will not terminate until one year after "the determination of the partnership items becomes final." If no valid FPAA was issued with respect to the [REDACTED] taxable year, the determination of partnership items cannot become final until a subsequent valid FPAA is issued for this year. Under your analysis, there was no "determination" at all with respect to the [REDACTED] taxable year.

Nevertheless, we recommend soliciting a second extension for the [REDACTED] taxable year in order to eliminate the hazard that the period of limitations on assessment may soon expire for the this year. The last sentence in paragraph one should be eliminated from this second consent in order to prevent this issue from resurfacing.

Please refer any questions on this matter to Bill Heard at FTS 566-3289.

MARLENE GROSS

By:



CURTIS G. WILSON

Acting Chief

Tax Shelter/Partnership/Branch

Attachment:

As stated.